based on the provisions of the former Land Code have therefore to be considered in the light of the provisions in the present Code and the Courts of Judicature Act.

I am inclined to the view that the National Land Code of 1965 has certain provision which I believe was not present in the old Land Code. Similarly the Courts of Judicature Act, 1964, contains a provision which places it second only to the Federal Constitution. Section 447(1) of the Code provides that as follows: —

"Nothing in this Act shall affect the operation of any rules of court; and, if any provision of this Act is inconsistent with any provision of any rules of court, the latter provision shall prevail and the former provision shall, to the extent of the inconsistency, be void."

The effect of section 340 of the Code which renders the title of the registered proprietor of land to be indefeasible except in the case of fraud, misrepresentation, etc., clearly affects the operation of rule 2 of Order 72 of the Rules of the Supreme Court in that it excludes the application of the procedure and practice allowed by the rule. The section therefore by implication contravenes the provision of the rule and by virtue of section 447 of the Code is thereby rendered void to the extent of the inconsistency and the rule prevails. Further, the power of the High Court to order registration of a *lis pendens* as embodied in the First Schedule, paragraph 6 of the Courts of Judicature Act, appears also to be inconsistent with section 340 of the Code. Section 4 of the Act places its provisions to prevail against those of any statute (which includes the Code) other than the Federal Constitution, in case of inconsistency or conflict and the provisions of the Act, in this case the First Schedule to section 25, prevails.

Under these circumstances, I am of the considered judgment that the court has power to make an order for the registration of a *lis pendens*. I have no alternative but to dismiss the application to set aside the order with costs.

Application dismissed.

Solicitors: *Skrine & Co.; Allen & Gledhill.*

U.H.G. v. DIRECTOR GENERAL OF INLAND REVENUE

[F.C. (Azmi L.P., Suffian C.J. and Raja Azlan Shah F.J.) April 29, 1974]

[Kuala Lumpur — Federal Court Civil Appeal No. 92 of 1973]

Income Tax — Appeal — Power of High Court to review conclusions of Special Commissioners — Findings of fact by Special Commissioners — Hirers of taxicabs not employees — Conclusions drawn on a view of facts not erroneous in law — Income Tax Act, 1967, ss. 91 and 140.

This was an appeal from the decision of the High Court ([1973] 2 M.L.J. 88) dismissing the appeal from the Special Commissioners on a case stated. The learned judge had held that there was sufficient evidence, on the facts found by the Special Commissioners, to support their decision that the drivers of taxi cabs were not employed by the taxpayer company and that the expenditure alleged to have been incurred by the taxpayer company in respect of wages and payments for diesel oil should be disallowed. The taxpayer company appealed to the Federal Court.

Held, dismissing the appeal: (1) the learned judge was correct in stating the law that the determination of the Special Commissioners could not be erroneous in point of law, unless it appeared that they acted without any evidence or on a view of facts which could not reasonably be entertained or that the primary facts did not justify the inferences drawn or conclusions arrived at;

(2) the conclusions drawn by the Special Commissioners were on the view of the facts not erroneous in law.

Cases referred to:-

(1) *Edwards (Inspector of Taxes)* v. *Bairstow and Harrison* [1956] A.C. 14.

(2) *Panama & South Pacific Telegraph Co.* v. *India Rubber & Telegraph Works Co.* (1875) L.R. 10 Ch. 526.

(3) *Taylor* v. *Oldham Corporation* 4 Ch. D. 395, 410.

(4) *Goodwin* v. *Phillips* (1909) 7 C.L.R. 1, 14.

(5) *Mandavia* v. *Income Tax Commissioners* [1959] A.C. 114, 123.

(6) *Meenakshi Mills Ltd.* v. *Viswanatha Sastri* A.I.R. 1955 S.C. 13.

(7) *Rosette Franks* v. *Dick* 36 T.C. 100, 108.

(8) *Cooper* v. *Stubbs* 10 T.C. 29.

(9) *Bean* v. *Doncaster Amalgamated Collieries Ltd.* 27 T.C. 296, 307.

(10) *Ramkinkar Banerji* v. *Commissioner of Income Tax* A.I.R. 1939 Patua 267, 268.

(11) *Great Western Railway Co.* v. *Bater* (1928) 8 T.C. 231, 244.

FEDERAL COURT.

V. K. Palasuntharam for the appellant.

Zulkifli bin Mahmood (Senior Federal Counsel) for the respondent.

Raja Azlan Shah F.J.: This is an appeal from the decision of Gill F.J., [1973] 2 M.L.J. 88, dismissing the appeal against the Special Commissioners on a Case Stated. The question of law for the opinion of the High Court is whether, on the facts found by the Special Commissioners, there is evidence to support their decision in disallowing the expenditure alleged to have been incurred by the taxpayer company in respect of wages and payments for diesel fuel. The learned judge held that there was sufficient evidence to support their finding.

The relevant facts which the Special Commissioners have had to consider are voluminous. They have been comprehensively assembled and analysed in the Case Stated and again in the judgment of Gill F.J. Having the benefit of this analysis and the findings which were made, I can state with comparative brevity those matters which appear to be of significance in the appeal on the basis that if amplification is desired on any point, reference may be made to the Case Stated and the judgment of Gill F.J.

It is well established that where the appeal is by way of a Case Stated a statutory duty is laid upon the Special Commissioners to set forth the facts as found by them and the deciding order but not the evidence on which the findings are based. The court of appeal is not concerned with the evidence given in the Case Stated but with the facts therein stated and it is points of law upon those facts the court has to decide. The question for the court of appeal therefore is whether, given the facts as stated, the Special Commissioners were justified in law in reaching the conclusions they did reach.

The findings of fact which the Special Commissioners made are stated here: (1) that the so-called contracts of service drawn up between the appellants and the drivers were not valid contracts, being signed by the drivers under duress or undue influence, so that the drivers were in fact not employees of the appellants but independent contractors who hired the taxi-cabs from the appellants on payment of rentals, (2) that the various books and records prepared and maintained by the appellants were in several material particulars fictitious and had no relation to facts, and (3) that the audited accounts of the appellants for the eleven years in question were inaccurate and did not reveal the true financial position of the appellants at the dates on which they were drawn up.

On those facts the Special Commissioners came to the following conclusions: (1) that 16 taxis owned by the taxpayer company were hired out on rentals; (2) the taxpayer company had not paid wages or salaries to the taxi drivers and the accounts which had been charged in the respective year's accounts and described as "wages and salaries (driver)" were not allowable in ascertaining their chargeable income; (3) the taxpayer company had not borne the cost of fuel consumed by the taxis and the amount which had been charged in the respective year's account and described as "petrol, diesel and oil lubricants" were not allowable in ascertaining their chargeable income; (4) in respect of the year ending June 30, 1968 the taxpayer company had made a profit of $3,000 from the sale of diesel fuel to taxi drivers, which profit had not been included in their income for that year. Accordingly, they made an order that the assessments of income tax for the years of assessment 1959 to 1969 be amended.

One main aspect of this appeal is the power of the court to review the conclusions of the Special Commissioners. It is urged upon us that the learned judge erred when he stated the law as follows:

"It is clear from the authorities that the determination of the Special Commissioners cannot be erroneous in point of law, unless it appears that they acted without any evidence or on a view of facts which could not reasonably be entertained or that the primary facts do not justify the inferences drawn or conclusions arrived at."

It was submitted to us that the conclusions of the Special Commissioners can be erroneous in point of law not only in the modes or for the reason set out by the learned judge but also in other modes or for some other reasons *e.g.* that no person acting judicially and properly instructed as to the relevant law could have come to the same determination, or if the true and only reasonable conclusion contradicts that determination, or the appellant's credit had been impugned partly on a ground which could not be sustained, and the finding against him appeared to have derived at least in part from that error.

I have gone through the various criticisms and I am bound to say that I think the enunciation of law is perfectly correct and that there is no criticism which can be fairly made of the learned judge's approach on the matter. The fact of the matter is that the enunciation is nothing more than a re-statement of the law by the House of Lords in *Edwards (Inspector of Taxes)* v. *Bairstow and Harrison*[1] and the learned judge was merely echoing what is now the classic and much cited speech of Viscount Simonds.

The only point which, in my opinion, requires brief mention is the absence of any authority for the negative enunciation of the learned judge.

In order to answer counsel's argument it is only necessary to state the process of analysis in a simple form "Is this X a Y?". The simplest way which the court can adopt to answer this question is to formulate a universal affirmative proposition "All Xs are Ys" and conclude that therefore "This X must be a Y". Alternatively, the court may enunciate a universal negative proposition "No X is a Y" and answer the question in the negative. Similarly the learned judge may approach the matter in either of the two ways, the affirmative approach or the negative approach. The former is to state the proposition: The determination of the Special Commissioners is erroneous in point of law and answer it in the affirmative; the latter is to state: The determination of the Special Commissioners cannot be erroneous in point of law and answer it in the negative. Rightly understood each process of analysis propounds the same test. And when we are told that there is absence of authority for the negative enunciation I cannot help recalling the observation of a great judge: "The clearer a thing is, said James L.J., the more difficult it is to find any express authority or any *dictum* exactly to the point." see *Panama & South Pacific Telegraph Co.* v. *India Rubber & Telegraph Works Co.*[2]

Before dealing with the substantial ground of appeal I think it would only be fair to refer with comparative brevity to the arguments of learned counsel on three matters. It is said that the learned judge erred (1) in failing to deal specifically with each of the points raised in the taxpayer company's notice of points of argument, (2) in holding that it was open to the respondent to take action either under section 91(1) or section 140 of the Income Tax Act, 1967 and (3) in not holding that there was a denial of justice to the taxpayer company at the hearing before the Special Commissioners.

On the first point, the learned judge did not find it expedient to deal separately with each of the questions raised in the said notice because he was of the view that in the final analysis, the points of law which can arise on a Case Stated by the Special Commissioners are whether their conclusions are "erroneous in point of law". With that pronouncement I am in full agreement. Indeed, I will not trouble myself by going through the roll of cases bearing upon the point. It would be impossible, I think, with advantage to add anything to the exhaustive review of the law by their Lordships in *Edwards* v. *Bairstow and Harrison, supra.*

It was ably insisted for the taxpayer company that the respondent could have acted under section 140 only, thus failure to give them notice that the latter was exercising his powers under the said section and failure to give particulars of adjustment together with the eleven notices of assessment as required by subsection (5) of section 140 rendered the said notices of assessment invalid.

The argument on this point is presented in two ways. The first is based on the principle formulated

by Sir George Jessel M.R. in *Taylor* v. *Oldham Corporation*[3] and later applied by O'Connor J. in *Goodwin* v. *Phillips*[4] in the following words:

"The conflict between the two sections is one of the kind to which Sir George Jessel M.R. refers in *Taylor* v. *Oldham Corporation*. Where there is a general provision which, if applied in its entirety, would neutralise a special provision dealing with the same subject-matter, the special provision must be read as a proviso to the general provision, and the general provision, in so far as it is inconsistent with the special provisions, must be deemed not to apply."

Applying that test learned counsel contended before us that since section 91 is a general section, it cannot overrule section 140 which it is said, is a special section. The latter section must be read as an exception from the operation of section 91. In other words, a general provision is *pro tanto* avoided by an express provision entirely inconsistent with it.

The principle is familiar to us. Many cases have acted upon it. It is good law. But the question is whether it applies in the instant case?

The answer to this question can only be found by reference to the two sections under consideration. The genesis and purpose of section 140 is clear. It gives the Director General an unfettered discretion in certain matters of tax evasion. The powers under it are wide but they are not plenary. He may, under the section, disregard or vary the transaction of controlled companies and make such adjustments as he thinks fit with a view to counter-acting the whole or a part of any direct or indirect effect of the transaction. To carry out these adjustments, he may make such assessments or additional assessments as he deems necessary to nullify a right to repayment of tax or to require a return of any tax which has been repaid. Section 91 is the foundation of the Director General's power to make an assessment or additional assessment in cases where the machinery of section 77 having been operated, no assessment has been made. He may rectify this anomaly within 12 years. An analogy of this section is provided in the case cited by the learned counsel: see *Mandavia* v. *Income Tax Commissioners*.[5] Thus section 140 merely superadds a discretion of the Director General's power.

It may well be that in a proper case the special provision of section 140 is excepted out of the general provision of section 91 but this is wholly contingent in each case where the general provision would be rendered inapplicable. In my opinion, it is rendered inapplicable only in those cases where the Director General has exercised the power given to him under the special provision of section 140. The present case, to my mind, falls outside the application of section 140 owing to the fact that the sworn affidavit of Mr. Moey Chee Seng, an assessment officer in the Inland Revenue Department clearly shows that the action was taken under section 91(1) and not section 140. Therefore this particular ground of appeal is not well founded.

The taxpayer company, however, advanced a further ground of appeal. It was contended that if as the learned judge held that it was open to the respondent to take action under either section, it would be contrary to Article 8(1) of the Constitution:

"All persons are equal before the law and entitled to the same protection of the law."

He made the submission in the light of an Indian case concerning income tax law and Article 14 of the Indian Constitution (equivalent to our Article 8(1)): see *Meenakshi Mills Ltd.* v. *Viswanatha Sastri*.[6] Briefly stated the petitioners complained that they were denied the same protection of the law of procedure which was applied to other persons in like circumstances. That led the court to say that

"Article 14 not only guarantees equal protection as against substantive laws but procedural laws also come within its ambit and the implication of the Article is that all litigants similarly situated are entitled to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination."

The court further held (page 17) that —

"Two substantially different laws of procedure, one being more prejudicial to the assessee than the other cannot be allowed to operate on the same field in view of the guarantee of Article 14 of the Constitution."

The short answer to this ground of appeal is that section 140 was not invoked. Also there is no evidence that the taxpayer company has been denied equal treatment of the laws which is enjoyed by other persons in similar circumstances.

Denial of justice was put forward as a ground of appeal. I have carefully noted the long history of the hearing before the Special Commissioners. They refused any further adjournment. The learned judge held that the taxpayer company was given ample opportunity to present their case. In the circumstances he said the refusal to grant any further adjournment was fully justified. I do not find it appropriate to do more than endorse the finding of the learned judge that nothing of sufficient gravity was established to entitle him to take a different view from that of the Special Commissioners.

A more serious objection and one of substance related to the findings of fact by the Special Commissioners. For example, one of the facts on which the Special Commissioners relied for their conclusion was the invalid service agreements with all its attendant consequences. The contention on behalf of the taxpayer company was that it was a misdirection for the learned judge to consider the service agreements only, based on bare oral testimony, and not a host of other documentary evidence produced by the taxpayer company, such as exhibits A4 and A5, the documentary evidence of the recognition dispute under section 8(1) of the Industrial Relations Act, 1967, exhibits A2 and A3, documentary evidence relating to defendant summons under section 70(c) of the Employment Ordinance, 1956, compensation agreement under regulations 24 and 49 of the Workmens Compensation Ordinance, 1952, wages sheets and documents relating to employees provident fund contributions.

In my opinion for purposes of the recognition dispute the relationship of master and servant does not arise, nor does the term "employee" bear any significance. What is important is the existence of a trade union of workmen claiming for recognition by their employers. Now "workman" is defined as "any person employed by an employer under a contract of

employment for hire or reward" and "contract of employment" is defined "an agreement whereby one person agrees to employ another as a workman and that the other agrees to serve his employer as a workman" (section 2). It is manifest that the definition of "workman" is not confined to a person employed under a contract of service at common law. He is within the definition if he is expected to serve his employer as a workman for hire or reward. That could be given a wide and liberal interpretation which would embrace every employed person.

It is worth commenting that the recognition dispute was not pursued with. Thus exhibits A4 and A5 are not cogent evidence that the taxi drivers were servants of the taxpayer company. At their best these documentary evidence affected the weight to be attached to them.

Exhibits A2 and A3 merely show that the taxpayer company was summoned to appear before the Commissioner for Labour to answer a complaint made against them by three former taxi drivers who were dismissed without prior notice. No evidence was adduced as to the outcome of these summonses. As such it cannot be disputed that these documents belong to the same category of documents as exhibits A4 and A5 above. It is unnecessary to say anything more about the worth of the other documents for that was a matter exclusively for the Special Commissioners to assess.

Then again the Special Commissioners relied on the inaccurate audited accounts which they concluded did not reveal the true financial position of the taxpayer company, *e.g.*, the fictitious loan entry of Ali Ditta, the pump attendant. The answer of the taxpayer company to that is that the Special Commissioners had not verified by personal inspection all the eleven audited reports. But the Special Commissioners declined to accept this explanation for the reason that Mr. David Kuok, an accountant and one of the members of the Special Commissioners, had personally examined all the audited accounts and other records which were tendered as exhibits and initialled them "D.K." meaning David Kuok. If this is not a matter of appreciating evidence, I cannot think what else is.

The Special Commissioners also relied on the various books of accounts and records prepared and maintained by the taxpayer company which they found to be fictitious and had no relation to the facts. To take only one instance of discrepancy, Exh. R7 revealed a collection of $69.80 in respect of taxi H 4587 for 1st June 1968, but Exh. R8 which referred to the collection in respect of the same taxi for the same day revealed an amount of $32.40. The answer of the taxpayer company to the two sets of accounts was that Exh. R7 gave only an estimate of fares collectible in one day whereas Exh. R8 showed the real fares collected for that day. Is there justification for keeping two sets of accounts? I think not. It is no doubt true that this is only one discrepancy but one might, I think, expect many similar discrepancies (there are many more discrepancies appearing in paragraph 7(1) of the Case Stated) and therefore it was open to the Special Commissioners to come to the conclusion that this was not merely an isolated case but showed the kind of thing which was going on. This proposition accords with the view expressed by Dankwerts J. in *Rosette Franks* v. *Dick*[7] in a passage which is deserving of reproduction in full (page 108):

> "It is perfectly true that this is only one incident, and the one incident only, which the Inspector of Taxes was able to establish before the Commissioners; but it was open to the Commissioners as it seems to me to conclude that this was not merely an isolated transaction but showed the kind of thing which was going on, and they were in my view entitled to come to the conclusion to which they did come from this incident, though one only, that there must have been other similar incidents and therefore that the accounts of the company could not be relied upon to show the whole of the trading profits of the company."

In that case the Commissioners had not indicated how far the evidence had been accepted or rejected: they had however made a precise finding that the accounts were unrealistic and this was sufficient in the circumstances.

In my view the Special Commissioners were entitled to come to the conclusion, which they did, that the accounts were fictitious.

All these documentary evidence which learned counsel asked us to consider as cogent are of the same pattern and bore, at their highest, on the weight to be attached to them. In other words, they related to, as the learned judge rightly held, matters of appreciation of evidence. It is in this context that he considered counsel's argument that the findings of the Special Commissioners are against the weight of the documentary evidence produced by the taxpayer company, and that "consisted of the various service agreements."

The findings of fact by the Special Commissioners are also criticised as erroneous in point of law. That, in my opinion, may be possible in a very clear and compelling case where either they have arrived at their conclusions without evidence or have misdirected themselves in point of law: see *Cooper* v. *Stubbs*.[8] It is urged upon us that the Special Commissioners have misdirected themselves in law by not putting to themselves the relevant and proper questions and answering them. It is said that if the service agreements are a sham and that would involve an element of fraud, there must have been an object for the execution of the said agreement and there must also have been a third party who is to be fooled by them. Hence the necessity for the respondents to ask the Special Commissioners to put to themselves these questions and to adduce relevant evidence for them to answer those questions. The submission is made in the light of the judgment of du Parcq L.J. in *Bean* v. *Doncaster Amalgamated Collieries Ltd.*:[9]

> "Unless the Commissioners, having found the relevant facts and put to themselves the proper question, have proceeded to give the right answer, they may be said, on this view, to have erred in point of law. If an inference from facts does not logically accord with and follow from them, then one must say that there is no evidence to support it. To come to a conclusion which there is no evidence to support is to make an error in law."

It is worth reiterating that the action is founded under section 91(1) of the Income Tax Act, 1967 so that an element of fraud or wilful default is not involved.

The particular issue of fact is whether the service agreements were a sham. That appears to me to be a question of fact which is proper to be decided by the Special Commissioners upon the evidence brought before them. The quantum of evidence necessary to prove this fact would no doubt fall on the respondent who is free to adduce whatever evidence he liked. It would be dangerous to lay down any formula or rule of universal application as to what amounts to sham agreements, for it must depend upon the particular circumstances of each case. On the basis of the presumption of law that the apparent state of affairs are real unless the contrary is proved (see *Ramkinkar Banerji* v. *Commissioner of Income Tax*[10]) it was contended for the taxpayer company that the service agreements were "real" unless the respondent proved them to the contrary. Therefore the burden of proving the service agreements are a sham is now upon the respondent. The evidence in rebuttal must be sufficiently cogent to persuade the tribunal of fact of the non-existence of the presumed fact. The rebutting evidence is to be considered on the merits of each particular case, and if it is believed, the presumption is displaced. But where there is evidence to consider, the decision of the Special Commissioners is final, even though the court might not, on the materials, have come to the same conclusion. In treating the question I can desire no more apt exposition of the law than what is contained in Lord Atkinson's speech in *Great Western Railway Co.* v. *Bater.*[11]

"Their (Commissioner's) determination of questions of pure fact are not to be disturbed, any more than are the findings of a jury, unless it should appear that there was no evidence before them upon which they, as reasonable men, could come to the conclusion to which they have come: and this, even though the Court of Review would on the evidence have come to a conclusion entirely different from theirs."

To displace the presumption the respondent led the following evidence: the drivers of the taxpayer company were not direct employees; they were independent contractors who hired out the taxis from the company on rentals; at all material times no relationship of master and servant ever existed between them; the taxi drivers were forced to sign certain documents, one of which was exhibit A1, the contents of which were never explained to them.

I should have thought that this is a case of a finding of fact that the service agreements are a sham. If that is so, then such finding is one which ought to be accepted and the court will not disturb it simply because it prefers a different conclusion.

Brief mention may be made regarding the contention of counsel that the finding of fact of the Special Commissioners *viz.*, the contracts of service were not valid contracts, being signed by the drivers under duress or undue influence, is *ex-facie* bad in law. This argument rested on the premise that the effect of a contract made as a result of duress or undue influence is to render the contract voidable and not void. In my opinion the matter can be disposed of shortly by saying that what is adumbrated before the Special Commissioners and understood by them is that the service agreements are a sham (not valid contracts). This construction appeared to me to place a consistent, rational and probable meaning on the whole of the phrase referred to when read in its context. It is the substance, not the form that must be looked at.

Reference was made to the powers of the Special Commissioners to direct the respondent to amend a notice of assessment which would have the effect of increasing the assessment beyond that specified in the notice. On this point it was suggested to us that this was nothing more than a matter of academic interest because the Special Commissioners are equipped with power to do so under paragraph 26 of the Fifth Schedule to the Income Tax Act, 1967 read with section 96(2) of the Act. Nothing of practical interest turns on this ground of appeal.

I would finally wind up by saying that the conclusions drawn by the Special Commissioners are on a view of the facts not erroneous in law. For these reasons I would dismiss this appeal with costs. I wish to state here that there are extensive grounds of appeal. But any omission to deal specifically with each one of them must not be taken to mean that I have not given the fullest consideration to it. Suffice it to say that in certain cases they overlapped; in others they are not worth a moment's glance.

Azmi L.P. and **Suffian C.J.** concurred.

Appeal dismissed.

TAN AH TING v. PUBLIC PROSECUTOR

[A.Cr.J. (Wan Suleiman F.J.) May 2, 1974]
[Kuala Lumpur — Selangor Criminal Appeal No. 146 of 1973]

Criminal Law and Procedure — Summary trial — Quantum of proof to be adduced before accused called upon to make defence — Expression "prima facie" case/evidence — Meaning of — Criminal Procedure Code (F.M.S. Cap. 6), s. 173(f).

The effect of section 173(f) of the Criminal Procedure Code is that it is the duty of a magistrate at the close of the case for the prosecution to determine whether or not the evidence tendered on behalf of the prosecution, if unrebutted, has established the case against the accused beyond all reasonable doubt.

Before calling upon the defendant to make his defence, the court has only to be satisfied that the prosecution has made out a *prima facie* case.

The meaning of the expression "*prima facie*" case/evidence generally accepted by the courts is where a party's evidence in support of an issue is so weighty that no reasonable man could help deciding the issue in his favour in the absence of further evidence.

Cases referred to:-

(1) *Soo Sing & Ors.* v. *Public Prosecutor* [1951] M.L.J. 143.
(2) *Sultan bin Rahmansa* v. *R.* [1955] M.L.J. 75.
(3) *Public Prosecutor* v. *Lee Ee Teong* [1953] M.L.J. 244.
(4) *Public Prosecutor* v. *R. Balasubramaniam* [1948] M.L.J. 119 @ p. 120.
(5) *Public Prosecutor* v. *Chin Yoke* [1940] M.L.J. Rep. 37 @ p. 38.

CRIMINAL APPEAL.

G. Joseph for the appellant.

Yaacob Ismail (Deputy Public Prosecutor) for the respondent.